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BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
U.S. OIL AND REFINING  
COMPANY,

Appellant,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 78-201

ORDER ON MOTIONS FOR  
SUMMARY JUDGMENT

Motions for Summary Judgment were filed by appellant and respondent, and a hearing thereon was conducted on February 5, 1979, before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, Chris Smith and David Akana (presiding), at its office in Lacey.

Appellant was represented by Charles W. Lean, Assistant Attorney General; respondent was represented by its attorney, Ray Graves.

Having considered the Motions, the supporting affidavits, the memoranda submitted, and the file and record herein, the Board concludes that the Motion for Summary Judgment should be granted in

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1 favor of respondent.

2 The matter placed before the Board and which is dispositive of this  
3 case involves a question of law as to whether six penalties<sup>1</sup> imposed by  
4 respondent were barred by the applicable statute of limitations. There  
5 appears a conflict between two statutes:

6 RCW 4.16.010 provides in part:

7 "Actions can only be commenced within the  
8 periods herein prescribed after the cause  
9 of action shall have accrued, except when  
in special cases a different limitation is  
prescribed by statute; . . . ."

10 RCW 4.16.100 then provides:

11 "Within two years:

12 . . . .

13 (2) An action upon a statute for a forfeiture  
or penalty to the state. [Code 1881 § 29; 1877  
14 p 8 § 29; 1869 p 9 § 29; 1854 p 363 § 5; RRS § 160.]

15 On the other hand RCW 4.16.160 provides that:

16 The limitations prescribed in this chapter shall  
17 apply to actions brought in the name or for the  
benefit of any county or other municipality or  
18 quasimunicipality of the state, in the same manner  
as to actions brought by private parties: Provided,  
19 That there shall be no limitation to actions brought  
in the name or for the benefit of the state, and no  
20 claim of right predicated upon the lapse of time  
shall ever be asserted against the state. And further  
provided, That no previously existing statute of  
21 limitations shall be interposed as a defense to any  
action brought in the name or for the benefit of the  
22 state, although such statute may have run and become

23  
24 1. The days in question were May 10, 11, 12, 15, July 1 and August 29  
25 of 1975. The order imposing a penalty for each day was issued on May 19,  
1978. Appellant has withdrawn all grounds for appealing the violations  
except its statute of limitation contention. Both parties agreed that the  
sole remaining issue is whether any statute of limitation bars the \$30,000  
in civil penalties imposed for the six violations

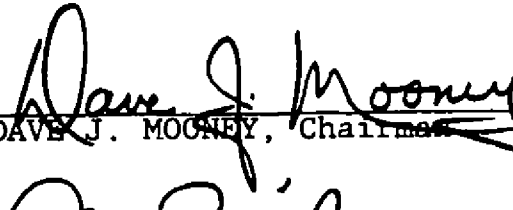
27 ORDER ON MOTIONS FOR  
SUMMARY JUDGMENT

1 fully operative as a defense prior to February 27,  
2 1903, nor shall any cause of action against the  
3 state be predicated upon such a statute. [1955 c  
4 43 § 2. Prior. 1903 c 24 § 1; Code 1881 § 35;  
5 1873 p 10 §§ 34, 35; 1869 p 10 §§ 34, 35, 1854 p  
6 364 § 9; RRS § 167, part.] (Emphasis added.)

7 Assuming for purposes of these motions that the "action" accrued on the  
8 dates indicated, we are persuaded that RCW 4.16.160 removes the "state"  
9 from the two year limitation of RCW 4.16.100(2). Accordingly, we  
10 hold that no statute of limitation bars these civil penalties. IT IS  
11 THEREFORE ORDERED that appellant's Motion for Summary Judgment is denied  
12 and respondent's Motion for Summary Judgment is granted.

13 DATED this 7<sup>th</sup> day of February, 1979.

14 POLLUTION CONTROL HEARINGS BOARD

15   
16 DAVE J. MOONEY, Chairman

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18 CHRIS SMITH, Member

19   
20 DAVID AKANA, Member

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26 ; ORDER ON MOTIONS FOR  
27 SUMMARY JUDGMENT